

**BADER FARMS, INC. and
BILL BADER**

Plaintiffs,

V.

**MONSANTO CO. and
BASF CORP.,**

Defendants.

MDL No. 1:18md2820-SNLJ

Case No. 1:16cv299-SNLJ

MEMORANDUM and ORDER

On April 5, 2019, this Court granted plaintiffs Bader Farms, Inc. and Bill Bader leave to file a Third Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a). Plaintiffs' amendments (1) added allegations that their peach orchard suffered further dicamba damage in 2018, rendering their peach operation no longer biologically or financially sustainable; (2) removed the claims for trespass and fraudulent concealment and added claims under Missouri Crop Protection Statutes; (3) added allegations pertaining to defendants' joint venture and pleaded joint venture liability as to each claim; (4) added allegations to clarify that plaintiffs pursue their conspiracy claims under both Restatement (Second) of Torts § 876(a) and (b); and (5) added additional allegations to conform with evidence obtained in the ordinary course of this litigation.

Although the *Bader* plaintiffs are part of this Multi-District Litigation regarding Dicamba Herbicide, the *Bader* plaintiffs were not parties to the Master Crop Damage Complaint (“MCDC”) filed by the other MDL plaintiffs on August 1, 2018, and the *Bader* plaintiffs are subject to a separate Case Management Order (“CMO”). Defendants argue that they need more

time for discovery in light of the Third Amended Complaint and move for an extension of CMO deadlines as follows:

<u>Event</u>	<u>Deadline</u>	<u>Proposed Deadline</u>
Defendants' expert disclosures	April 24, 2019	June 28, 2019
Discovery closes	July 1, 2019	September 4, 2019
Dispositive/ <i>Daubert</i> motions	July 15, 2019	September 18, 2019
Trial	October 28, 2019	January 27, 2020

This Court will grant defendants' motion. Although the Court acknowledges that plaintiffs have always alleged that the dicamba damage is continuing, cumulative, and would likely result in complete orchard failure, plaintiffs' amendments have larger implications. The new focus on 2018 spraying would, for example, involve different labeling and marketing. Discovery regarding 2018 spraying would require investigating whether the individual who allegedly applied dicamba saw, read, and relied on the label and on allegedly negligent advertising or marketing. Notably, plaintiffs do not dispute defendants' right to take discovery on these issues. Furthermore, plaintiffs added several causes of action, and though they all relate in large part to the core factual and legal issues at play, it is likely that at least some additional discovery will be necessary.

Plaintiffs suggest that much of the 2018 discovery has been provided, but, ultimately, Monsanto has requested only 60 additional days for discovery. The requested extension is a modest amount of additional time for a complex case. The Court will grant Monsanto's motion (and BASF's motion to join). No further extensions, however, will be granted.

Defendant's expert disclosures are due today, and the Special Master has properly

instructed defendants that they should adhere to that schedule. The Court will permit the parties to supplement expert disclosures as required, and additional expert depositions may be taken as well and at the direction of the Special Master.


Accordingly,

IT IS HEREBY ORDERED that the defendant Monsanto's motion to extend CMO deadlines (#170) is GRANTED.

IT IS FURTHER ORDERED that defendant BASF's motion to join in Monsanto's motion (#172) is GRANTED.

IT IS FURTHER ORDERED that the CMO is amended as follows: Discovery will close on September 4, 2019; dispositive and *Daubert* motions are due on September 18, with responses due October 16 and replies due October 30, 2019; and trial is reset for January 27, 2020.

So ordered this 24th day of April, 2019.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE